

# **EXHIBIT 61**

## **REDACTED**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

- - -

THE STATE OF TEXAS, et al.,  
Plaintiffs,

v. Civil Action No.

GOOGLE LLC, 4:20-cv-00957-SDJ  
Defendant.

- - -

April 19, 2024

- HIGHLY CONFIDENTIAL -

Remote videotaped deposition  
of [REDACTED], conducted from the  
location of the witness at Freshfields  
Bruckhaus Deringer LLP, 170 Greenwich  
Street, New York, New York, commencing at  
9:00 a.m. EDT, on the above date, before  
Marie Foley, a Registered Merit Reporter,  
Certified Realtime Reporter and Notary  
Public.

Job No. MDLG6663184

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24 VIDEOGRAPHER:

25 Danny Ortega

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- - -

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9:13 a.m. EDT

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THE VIDEOGRAPHER: We are now on record. My name is Danny Ortega, and I am the legal videographer for Golkow Litigation Services.

9

10

Today's date is April 19, 2024, and the time is 9:13 a.m.

11

12

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This video deposition is being held in the matter of the State of Texas versus Google, LLC.

14

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Our deponent today is [REDACTED]

16

17

Counsel, please identify yourselves for the record.

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MR. McBRIDE: John McBride on behalf of the State of Texas. With me also on the call is Peter Hillegas, also on behalf of State of Texas, from Norton Rose Fulbright.

23

24

25

MR. MAHR: Eric Mahr on behalf of Google and the witness. And with me is my colleague Lijun Zhang.

1  
2 THE VIDEOGRAPHER: The court  
3 reporter today is Marie Foley and will  
4 now swear in the witness.

5 THE STENOGRAPHER: If I could  
6 ask you to raise your right hand,  
7 please, sir.

8 Do you swear or affirm the  
9 testimony you give will be the truth,  
10 the whole truth, and nothing but the  
11 truth today?

12 THE WITNESS: I do.

13 THE STENOGRAPHER: Thank you.

14 - - -

15 [REDACTED], the Witness herein,  
16 having been first duly sworn by a  
17 Notary Public in and of the State of  
18 New York, was examined and testified  
19 as follows:

20 EXAMINATION BY

21 MR. McBRIDE:

22 Q. Good morning, [REDACTED].

23 A. Good morning.

24 Q. You've been deposed before,  
25 correct?

1  
2 understand that perhaps this ad is behind  
3 schedule, at risk of not meeting the  
4 commitment to serve a million ads in the  
5 month of April, and then there would be  
6 actions that they could take to make it  
7 more likely that that ad could serve.

8 Or for another example, they  
9 could see hey, for this type of inventory,  
10 this is how much money you typically make  
11 in the auction. This is how much money  
12 you actually made over the last one week  
13 or two weeks.

14 Q. Does a publisher have access to  
15 all the same data that Google has access  
16 to regarding any particular auction?

17 A. Not necessarily.

18 Q. Can you give me some examples of  
19 information that Google would have that a  
20 publisher would not?

21 A. Mostly these are related to user  
22 privacy where by and large we do provide  
23 the information. What we might do is  
24 remove identifying information for a  
25 specific user.



1  
2           So what does that mean? Let's  
3 say the user visits a particular, you  
4 know, or, like, interacts with a  
5 particular publisher's app, right.  
6 There's a particular ad slot on that app.  
7 We run an auction. We sell -- return an  
8 ad to that -- to that user's device, and  
9 then we do this for every user who comes  
10 to the app. The publisher might see for  
11 this particular ad slot on this particular  
12 app over this particular hour, say, over  
13 this particular day, whatever it is, I ran  
14 these many auctions; these were the  
15 outcomes of the auctions; these were the  
16 bids that they received for each of the  
17 auctions. But they might not know which  
18 particular set of bids corresponded to  
19 which particular user.

20           Q.     I think we're going to get into  
21 this in -- in a moment, but is it the case  
22 that the publisher sees every bid that was  
23 submitted for a particular auction?

24           A.     This has varied over time. What  
25 you describe is currently the case.

1

2 Q. When was it not the case?

3 A. Prior to 2019. And here I'm

4 speaking in my personal capacity. But --

5 but I have a reasonably accurate knowledge

6 of this.

7 Prior to 2019, before we

8 migrated to the unified first-price

9 auction, there was a [REDACTED]

10 [REDACTED]

11 [REDACTED] and so some

12 buyers opted out of having their bids

13 included in the data that would go to

14 publishers. We made [REDACTED]

15 [REDACTED] as part of a migration

16 to the unified first-price auction, and

17 then in the process of that, we removed

18 that offer.

19 Q. What was the process for buyers

20 to opt out of inclusion in that file?

21 A. I am sorry, I'm not aware of the

22 exact details for how they could opt out.

23 Q. Do you know if many buyers chose

24 to opt out?

25 MR. MAHR: I'll object on scope.

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But you can answer if you're  
able in your personal capacity.

A. I know at least a couple of  
buyers did, but I do not know how many.

Q. Who -- why did Google make a  
change to the, I'm sorry, was it the [REDACTED]  
[REDACTED], is that what you called it?

A. [REDACTED]

Q. [REDACTED]

Why did Google make a change to  
that [REDACTED] for unified  
first-price auctions?

A. Yeah, first of all, I should  
clarify that [REDACTED]

[REDACTED] at  
the time of the migration to unified  
first-price auction.

We made several changes to the  
auction, right, and to, sort of like, how  
Google Ad Manager worked as a result of

1  
2 that migration, including a change from a  
3 second-price auction to a first-price  
4 auction.

5 As part of those changes, we  
6 wanted to provide publishers more  
7 visibility into the full set of bids that  
8 they got, but we also had to balance that  
9 against some other constraints such as  
10 privacy and legal constraints.

11 Q. What -- well, let's start what  
12 legal constraints?

13 MR. MAHR: I'll just caution the  
14 witness not to reveal in his answer  
15 any communications with counsel about  
16 legal advice.

17 THE WITNESS: Thank you, Eric.

18 A. I was just going to say that as  
19 I understood those constraints, like,  
20 those were all in conversation with our  
21 product counsel.

22 Q. Well, I guess can you -- I'm not  
23 interested in the conversation you had  
24 with your counsel. I'm interested in the  
25 changes that were made.

1

2

A. So, the changes that were made

3

involved

4

5

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11

Q. How did publishers react to

12

changes to that

?

13

A. I think a few publishers

14

expressed some concerns, but I think the

15

vast majority of publishers did not.

16

MR. McBRIDE: If we could pull

17

up GOOG-DOJ-29427368.

18

(The above mentioned exhibit was

19

published.)

20

MR. McBRIDE: And if we could

21

skip to the first -- past the metadata

22

sheet.

23

(Exhibit 152, email chain ending

24

9/11/2019, Bates GOOG-AT-MDL-29427358-

25

374, was marked for identification, as

1

2 of this date.)

3 BY MR. McBRIDE:

4 Q. So, [REDACTED], this is an email  
5 from you sent September 11th, 2019, and  
6 you're sending it to [REDACTED] and the  
7 subject is: Re: Privacy Chat.

8 Do you see that?

9 A. I do.

10 Q. Who's [REDACTED]?

11 A. I believe he was in our sales  
12 team, but I'm not actually sure what his  
13 role was.

14 Q. So, due to the nature of --  
15 of -- this is an email thread, so I think  
16 it may be -- it may be easiest for us to  
17 start at the bottom and work our way up.  
18 So if we could do that and jump to --  
19 apologies. Let me get this document -- so  
20 if we jump down to the page that ends in  
21 370, and there is in the lower half of the  
22 page where it says: On Wednesday  
23 September 11th, 2019 at 11:23 a.m. [REDACTED]  
24 [REDACTED] wrote.

25 Do you see that?

1  
2 misleading and not necessarily a very  
3 careful choice by [REDACTED] while  
4 writing this email.

5 But as I understand the concern  
6 around user privacy was essentially  
7 revealing which particular users were  
8 associated with which bids from which  
9 advertisers because that could convey some  
10 information about the user which -- which  
11 might be sensitive in some fashion.

12 Q. Also in the parenthetical we  
13 see -- well, maybe I'll just read -- read  
14 the full sentence again: We had a call  
15 with [REDACTED] yesterday, where they

16 [REDACTED]  
17 [REDACTED] - and then in parentheses -  
18 [REDACTED]  
19 [REDACTED]

20 I want to unpack that a little  
21 bit.

22 [REDACTED]  
23 [REDACTED] that we were discussing  
24 a little bit earlier?

25 A. It is.

1

2

Q. And this reference to [REDACTED]

3

4

[REDACTED] what is that referring

5

to?

6

A. This refers to [REDACTED]

7

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A. [REDACTED]

21

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24

25

Q. [REDACTED]



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16

17

18 with the move to the unified first-price

19 auction.

20 Q. You see then the last full

21 sentence: [REDACTED] also made claims about us

22 being anti-competitive with this change.

23 Do you see that?

24 A. I do.

25 Q. Do you know who [REDACTED] is?

1

2

A. I believe that refers to [REDACTED]

3

[REDACTED]. I'm not sure if [REDACTED] is her full

4

name or, but she commonly goes by [REDACTED].

5

She at the time used to work for [REDACTED].

6

Q. Other than -- well, with respect

7

to your changes to the [REDACTED] are

8

you aware of any other publishers who made

9

claims about Google being anti-competitive

10

with -- with the changes to the [REDACTED]

11

[REDACTED]

12

A. [REDACTED] is the most prominent

13

one. I believe there were a couple of

14

others, but I'm not sure who exactly they

15

are.

16

Q. Can you remember any of their

17

names?

18

A. I was just going to say I will

19

also note that here I'm speaking in my

20

personal capacity 'cause I don't -- I

21

haven't seen this document. I wasn't

22

prepared to discuss this particular

23

document.

24

Sorry, go ahead.

25

Q. No, my question was just you're

1

2 saying you didn't review this document in  
3 preparation for your deposition today?

4 A. That's right.

5 Q. Understood.

6 A. Right. And -- yeah, so, based  
7 on my personal recollection, I think [REDACTED]  
8 [REDACTED] may have been one of them, but  
9 I -- I'm not completely sure.

10 Q. Anybody else?

11 A. I'm sorry, I can't -- I can't  
12 even tell you with 50 percent confidence  
13 the name of any individual other  
14 publisher.

15 Q. Understood.

16 How about with respect to  
17 reserve price optimization, are you aware  
18 of any customers saying that the  
19 introduction of reserve price optimization  
20 was anticompetitive?

21 MR. MAHR: Objection to scope.

22 But you may answer.

23 A. I'm speaking in my personal  
24 capacity here.

25 I am not aware of any publishers

1

2 who complained about the introduction of  
3 reserve price optimization.

4 Q. I'm sorry, you're not aware of  
5 any customers who complained about the  
6 introduction of reserve price optimization  
7 because it was anticompetitive or  
8 complained about it for any reason at all?

9 A. I'm not aware, I think I said  
10 I'm not aware of any publishers who  
11 complained about reserve price  
12 optimization, and I meant for any reason  
13 at all.

14 Q. How about for Dynamic Revenue  
15 Share?

16 MR. MAHR: Objection; scope.

17 A. Again here I'm speaking in my  
18 personal capacity.

19 I am not aware of any publishers  
20 who complained about it. But I will note  
21 that there was a control that publishers  
22 could use to decide whether they wanted to  
23 have it turned on or off and the vast  
24 majority -- there was -- there were some  
25 publishers who turned it off, but the vast

1

majority of publishers kept it on.

3

So I don't know that those publishers that turned it off had a specific complaint; I'm not aware of any complaints. But --

7

Q. Yeah.

8

A. -- overall, publishers seemed very happy with the feature.

10

Q. So I want to be clear.

11

For DRS, Dynamic Revenue Share, the ability of a publisher to turn that off only existed with respect to Dynamic Revenue Share version 2, correct?

15

A. For version 2 and subsequently.

16

Q. But for Dynamic Revenue Share version 1, publishers did not have the choice to turn Dynamic Revenue Share on or off, correct?

20

A. That is correct.

21

Q. If we can go up to the top of this -- of this email, the first page, and I want to zoom in on -- on these -- the two paragraphs here.

25

So, [REDACTED], this is -- this

1  
2 is your response to the -- the emails in  
3 the thread below, and I'll start just by  
4 reading aloud this first paragraph: My  
5 answers to the questions are very similar  
6 to [REDACTED]'s: [Yes, no, no, marginally].  
7 I do think there's a risk they'll move off  
8 Ad Manager, but I actually believe that  
9 [REDACTED] has been signaling this for some  
10 time. All the times she's been saying  
11 "It's unfair that AdX doesn't work with  
12 other ad servers in the same way it works  
13 with DFP/It's unfair that AdX doesn't  
14 contribute demand to prebid" have actually  
15 been the reverse of the usual complaint  
16 (which has been largely addressed since  
17 Exchange Bidding). This new complaint  
18 doesn't make sense unless you want to use  
19 a different ad server.

20 Do you see that?

21 A. I do.

22 Q. So, when you say that "[REDACTED] has  
23 been signaling this for some time" --

24 A. I'm sorry. Would it be possible  
25 for me to see the questions that are being

1

2

just a five minute break?

3

MR. MAHR: Good for us.

4

I'm sure good for Marie.

5

THE STENOGRAPHER: Yes, thank

6

you.

7

MR. MAHR: So let's go off the

8

record.

9

THE VIDEOGRAPHER: The time

10

right now is 11:51 a.m.

11

We are off the record.

12

(Recess taken.)

13

THE VIDEOGRAPHER: The time

14

right now is 12:01 p.m.

15

We are back on the record.

16

BY MR. McBRIDE:

17

Q. Welcome back, [REDACTED].

18

Turning back to our Exhibit 151.

19

(The above mentioned exhibit was

20

published.)

21

BY MR. McBRIDE:

22

Q. If we jump to the -- let me just

23

stay on this for one second.

24

So, some examples you gave me of

25

filtering bid responses include if -- if

1

2 the bid is below the floor, that would be  
3 a reason why a bid response would be  
4 filtered. Is that correct?

5 A. That's correct.

6 And I think the other example I  
7 gave was it didn't match the protections  
8 that the publisher set up.

9 Q. Any other reasons a bid response  
10 would be filtered, that you can think of?

11 A. I think I also gave you the  
12 example of the ad was not the right format  
13 or the right size publisher requested.

14 Another one is we filter out ads  
15 that might be malware or otherwise harmful.  
16 We have a number of protections like that  
17 we apply.

18 Q. Would -- I know that Google runs  
19 a number of experiments.

20 Are there, to your knowledge, or  
21 have there been experiments running in [REDACTED]  
22 [REDACTED] that may have been -- may have  
23 resulted in bids being filtered out?

24 A. If you mean an experiment

25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], I am not



1  
2 aware of any such experiment. But, you  
3 know, generally speaking, we run [REDACTED]  
4 [REDACTED] experiments in a year. It's  
5 possible there may have been one, but I am  
6 not aware of any such experiment.

7 Q. I guess, and I think that's a  
8 helpful clarification for my question. So  
9 let me try it again.

10 Are you aware of any experiments  
11 that would have been running that as a  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 A. I can think of not a specific  
16 example, but the fact that that might have  
17 occurred is plausible.

18 For example, let's say we were  
19 to rule out, you know, an improvement to  
20 our malare detection that way. That might  
21 have started out as an experiment. In the  
22 course of a experiment we might have  
23 filtered out some malare that we newly  
24 identified that we hadn't identified  
25 before. So the effect of that experiment

1

2 might be to result in something's being  
3 filtered out.

4 Q. Any other examples you can think  
5 of that might result, experiments that  
6 might result in ads being filtered out?

7 A. I mean, again I don't have any  
8 specific example in my mind. I'm just,  
9 sort of, speculating on the kinds of  
10 things that could have occurred.

11 I think we spoke about privacy  
12 and consent, right. There were times  
13 where, you know, we probably ran  
14 experiments before ruling out some of the  
15 new consent requirements. As those  
16 experiments ruled out, there might have  
17 been cases where a buyer was not -- did  
18 not have the proper consent, meaning the  
19 user didn't consent to that buyer of  
20 having information or participating in  
21 some way. And so, you know, in the course  
22 of the experiment, we realized that that  
23 should change, okay.

24 But again, I'm not aware of any  
25 specific experiment that we did related to

1

2           A.       I do.

3           Q.       And then there's a paragraph on  
4 the following page.5                   And I'll wait for Jim to catch  
6 up.

7                   (Pause.)

8                   So, it says the experiments  
9 team -- at the very top it says: The  
10 Experiment team develops the  
11 infrastructure and tools that allow  
12 Display Ads engineers to run experiments  
13 on fractions of live Ad requests, helping  
14 them to select and launch the best  
15 improvements to achieve their  
16 quarter-over-quarter RPM goals. The  
17 Experiments team also provides the  
18 experimenters with mechanisms to gradually  
19 ramp up/down a feature and red-buttons for  
20 controlling the flow of traffic through  
21 the Display Ads stacks.

22                   Do you see that?

23           A.       I do.

24           Q.       Are you familiar with the  
25 Experiments team?

1

2           A.       I -- I knew they existed. I've  
3 spoken to some people on that team at some  
4 point. Didn't work very closely with  
5 them, but we used their infrastructure.

6           Q.       How did you use their  
7 infrastructure?

8           A.       So, for example, if we wanted to  
9 run experiments on Google Ad Manager, we  
10 would use the infrastructure that they  
11 wrote.

12          Q.       And did you run experiments on  
13 Google Ad Manager?

14          A.       We did.

15          Q.       Do you have a rough sense of how  
16 many?

17          A.       This -- this document below

18

19

20

21

22

23

24

25          Q.       Let me try to unpack that a

1

2 little bit.

3

When you say [REDACTED]

4

[REDACTED] were running on

5

Google Ad Manager, do you have a sense of

6

how much -- they were running on live

7

traffic in Google Ad Manager. Is that

8

right?

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Q. As a general matter, when --

25

when -- in your work on the sellside, when

1  
2 you were making changes and rolling out  
3 new features for -- for anything you  
4 were -- you were designing and  
5 implementing, you would run experiments,  
6 correct?

7 A. I will say [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 Q. Now, some of the key stats that  
11 are -- are listed here, I think it says  
12 key stats as of August 2019, the first  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 And I think -- I guess, so,  
17 first of all, do you have any reason to  
18 doubt that as of August 2019 there were,  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 MR. MAHR: Objection; form and  
23 scope.

24 You can answer.

25 A. I have no reason to doubt it,

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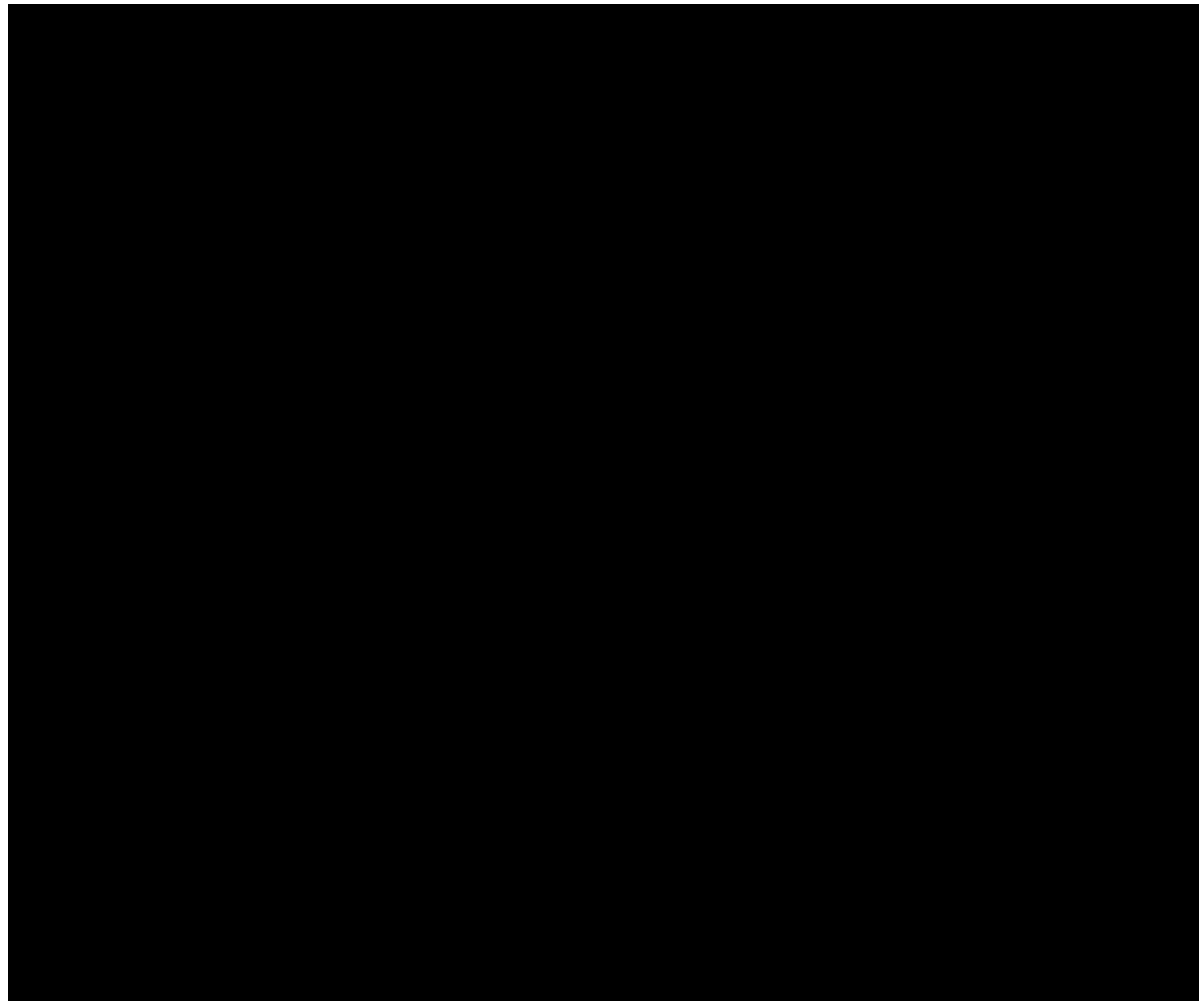
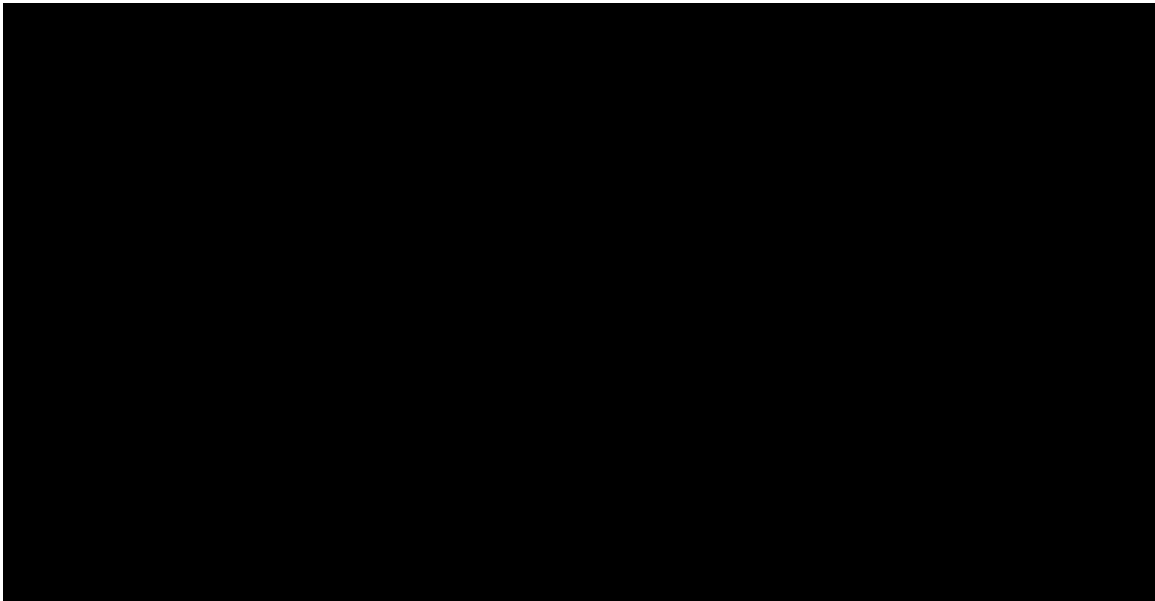
25

THE STENOGRAPHER: I'm sorry, I  
can't hear that last answer, that last  
sentence.

A. I think I said I will note that

Q. And you say, I think you -- you

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Do you see that?

8

A. I do.

9

Q. So is that saying that on average for a given query that you'll --

11

12

13

MR. MAHR: Objection to form;

14

scope.

15

You can answer.

16

17

A. That seems to be what it's saying, yes.

18

19

Q. And do you have any reason to -- to doubt that that's correct?

20

A. I have no reason to doubt that.

21

22

23

24

25

Q. If you ran an experiment and the result of the experiment impacted a publisher's revenue or an advertiser's bid, did Google keep track of that and

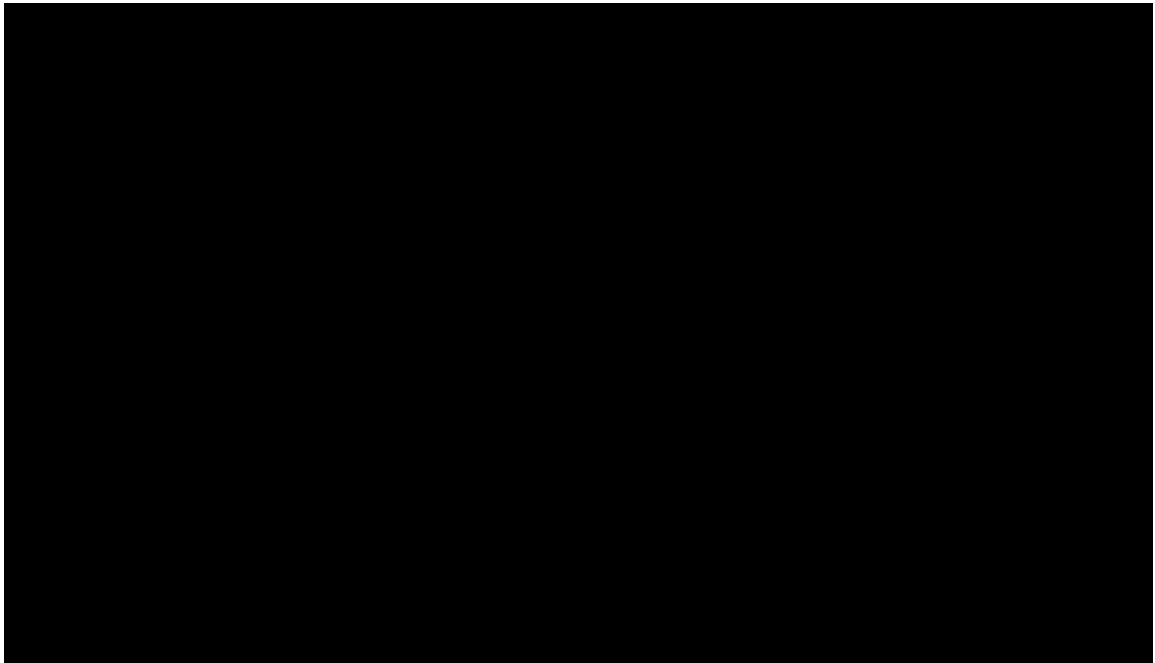
1  
2 reimburse the publisher or -- or  
3 advertiser for the consequence of the  
4 experiment?

5 A. Generally speaking, I can't  
6 speak to practices for advertisers where I  
7 didn't conduct experiments on advertisers.  
8 That would be more done by buyside  
9 products.

10 THE STENOGRAPHER: I'm sorry, I  
11 couldn't hear.

12 "I can't speak to practices for  
13 advertisers where..."

14 A. I didn't work on buyside  
15 products.



## C E R T I F I C A T E

I, MARIE FOLEY, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of New York, do hereby certify that prior to the commencement of the examination, [REDACTED], was duly remotely sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony as taken stenographically by me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am [REDACTED] in the action.

COURT REPORTER

Registered Merit Reporter

Certified Realtime Reporter

Notary Public

Dated: April 22, 2024